

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
HARRISONBURG DIVISION

DAVID B. BRIGGMAN,

Plaintiff,

v.

TIMOTHY A. MARTIN,

Defendant.

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Civil Action No. 5:21-cv-00074

By: Elizabeth K. Dillon
United States District Judge

ORDER

Pro se plaintiff David Briggman has filed a complaint and a motion for a temporary restraining order or preliminary injunction against Timothy Martin, the Commonwealth Attorney for Augusta County, seeking to prevent Martin from enforcing Virginia Code §18.2-186.4 against him. Briggman also requests that the court grant this motion prior to November 30, 2021, the date Briggman has been ordered to appear in Augusta County General District Court on charges in that court. (Dkt. No. 2.)

Federal Rule of Civil Procedure 65 provides that a federal court can issue a temporary restraining order without notice only if (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required. Fed. R. Civ. P. 65(b)(1). Briggman failed to satisfy either requirement.

First, Briggman's complaint states that "I, David D. Briggman, hereby verify that the foregoing is true and correct to the best of my knowledge and ability." (Compl. 10, Dkt. No. 1.) This statement does not satisfy the verification requirement. Instead, a verified complaint must either be sworn to and notarized, or state that it is submitted under penalty of perjury pursuant to 28

U.S.C. § 1746. *See, e.g., Peters v. Bank of Am.*, Criminal Action No. 10-cv-01382-MSK, 2010 WL 2682129, at *1 (D. Colo. July 2, 2010) (applying these requirements to a pro se motion for a temporary restraining order); *Schuh v. Mich. Dep't of Corr.*, No. 1:09-cv-982, 2010 WL 3648876, at *1 (W.D. Mich. July 26, 2010) (verified complaint is a complaint sworn under penalty of perjury or signed by a notary public).

Second, a summons was issued on November 18, 2021 (Dkt. No. 4), but defendant has not appeared and there is no proof of service on the docket. Briggman has not certified in writing any efforts to give notice and the reasons why it should not be required.

For these reasons, Briggman's motion for a temporary restraining order (Dkt. No. 2) is DENIED.¹ The clerk of court is directed to send a copy of this order to the pro se plaintiff.

Entered: November 24, 2021.

/s/ Elizabeth K. Dillon
Elizabeth K. Dillon
United States District Judge

¹ Briggman's motion for a preliminary injunction remains pending.